Know the Law: Part 1

By Lt David L Williams
Posted: December 10, 2010

What are the legal aspects of using deadly force? Every state has guidelines for the use of deadly force. As a legally armed citizen, it is your responsibility to know those guidelines before you carry a gun for personal defense.

Being legally armed is a tremendous responsibility. You carry a tool that can take human life in an instant. Statistics show that most self-defense shootings happen in close quarters and at short distances. These shootings also usually happen in low-light conditions. The vast majority of scenarios involving deadly force unravel in a matter of a few seconds from start to finish.

Personal Experience

I have personally been involved in several shootings. In one case, I was holding onto the suspect when he pointed a gun at me. I literally shoved the gun in his side and fired. My part in this gunfight lasted about a second.

At the other end of the spectrum, I was among several officers who returned fire when a suspect came to our police headquarters and ambushed two rookie police officers coming in to work. One officer was killed and another severely wounded. More than 70 rounds were fired in the running gunfight at distances up to almost 100 feet. All this took less than 30 seconds from start to finish.

You can see that you do not have any time to waste. You must plan ahead for the fight, and prepare yourself mentally. You do not have time to hesitate.

It has been my experience that the greatest source of hesitation is not being mentally prepared. The two sources of that hesitation seem to be:

1. Personal doubts about using deadly force based on religious or social concerns.
2. Doubts about the laws regarding when deadly force can be used.

I addressed the first point in my article Deadly Force Decisions. Now let's talk about the laws related to using deadly force.

The Law

Every state has laws concerning the use of deadly force. As a responsible citizen, you need to know those laws. Contact your State Attorney General for guidelines and publications. Seek information from official sources like your local police departments and prosecutor's office.

Attend training classes, but be sure those classes are conducted by instructors certified in the use of deadly force. I have seen instructors who were not knowledgeable and certified on the topic talk about deadly force. Do not take a chance with your freedom by attending a class with an uncertified instructor.

Do not listen to the opinions of untrained and uncertified people when it comes to the use of deadly force. You must be confident that you are acting in a safe and legal manner. Your freedom is too

important to take a chance with. Find good training. Get solid information from legitimate sources.

The gun culture we live in has many sources of information. Not all that information is correct. Websites can be started by anyone with a computer and a few dollars. Buddies standing around talking at a gun show may have the best intentions when they talk about the law. But are they trained? Do they really know what they're talking about? I certainly would not want to go into court and have as my only defense, "The guys at the gun show said it was legal."

As an instructor certified to teach deadly force to law enforcement personnel and civilians, I have seen some common guidelines that are used throughout the country. Remember, these are guidelines you can use to help prepare you before a deadly force decision. However, you still need to research and know the laws of the state where you live and anywhere you travel.

What Is Deadly Force?

Definitions differ from state to state, but here is a good general working definition: "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.

Obviously, shooting someone is deadly force. Stabbing or cutting someone with a knife meets the definition of deadly force. There are many situations where a person can exert force that will likely cause death. The use of a car as a weapon is a common scenario police officers face. Getting run over could definitely kill you. Common everyday items can be used as weapons that can cause death. The determining factors are how the item is used and how the situation develops.

If you carry a gun or knife for self-defense, you carry weapons capable of delivering deadly force. They are not intended to scare or intimidate. They are not intended just to make you "feel" safer. They are intended to give you the capability of delivering deadly force under the proper legal circumstances. You must be confident about when you can use those tools to defend yourself and the people you love.

Self-Defense and the Defense of Others

Most states only allow the use of deadly force in self-defense or the defense of others. Deadly force is not usually permitted to recover or protect personal property. You must be able to articulate, or explain, why you used deadly force.

I have taught my Deadly Force Decisions class to thousands of concealed carry students, police academy recruits, and seasoned law enforcement officers. When we discuss justifying the use of deadly

force, one common statement I hear is, “All I have to do is say I was in fear for my life.”

These are not some magic words that allow you to use violence without any responsibility. The fact is that you must ARTICULATE, or explain, why you used deadly force. And that use of force must make sense to the people who will judge your actions.

Before that armed confrontation occurs, you must be set in your mind that you will use deadly force when legally permitted. You must also know what the law allows, so you do not hesitate at the moment of decision.

We all believe “It is better to be judged by 12 than carried by six.” When the smoke clears, you must be able to explain to those 12 peers why your actions were reasonable and prudent according to law. You must be able to articulate to responding law enforcement officers that what you did was justified.

Most states also permit the use of deadly force to protect a third party who cannot defend themselves. Once again, you must know the law, be set in your mind and prepared to act to defend the people you love.

The general guideline is that an armed person may use force to protect an unarmed person as long as the situation would permit the unarmed person to use a gun if they had one available. In other words, the same rules apply when you defend someone else as when you defend yourself.

Let me make a strong suggestion here. Do not get involved in a situation unless you absolutely, positively know what is going on. Many times a situation is not as it appears. You could be walking into a very dangerous and difficult situation. Unless the person involved is a loved one or someone you know well, consider backing off and calling the police.

If you see any crime in progress, be the best witness possible. Get all the information you can, call 911 and get the professionals there to help. You may be very skilled and confident, but it is always better to send in the cavalry!

You could roll up to a convenience store one night and see a robbery in progress. You see a man at the counter pointing a gun at the clerk. Clearly this is a bad guy. You know police response times can be slow, so you decide to go in and stop the robbery. The problem is that you don’t see the second guy hiding behind the door with the sawed-off shotgun.

There is an exception to this advice. If you are in a situation where bullets are flying and people are

dying, calling 911 alone may not be the proper response. An active shooter situation changes all the rules. That is why you must be both mentally and physically prepared to meet the threats of the modern world.

Start your mental preparation by watching the news. Read the newspaper. Pay attention to what is going on around you. When you see a story about a crime, think about how you would handle it if you were in that situation. Use these situations as your personal training scenarios. Talk things over with your family and loved ones.

In other words, get your best weapon ready -- your mind!

There are more guidelines for using deadly force, and I will discuss them in part 2 of this article. Be sure to follow up for additional critical information about the use of deadly force.

Know the Law: Part 2

By Lt David L Williams
Photos by Author
Posted: December 29, 2010

In Know the Law, Part 1, I discussed the definition of deadly force and when you may be able to use it in self-defense. Now let's look at the legal guidelines for using deadly force.

Every state has guidelines for the use of deadly force. If you are a legally armed citizen, it is your responsibility to know those guidelines before you carry a gun for personal defense.

As an instructor certified to teach the use of deadly force, I have seen similarities in the laws of many states. Below are some common guidelines that may help you prepare to make the decision on using deadly force.

Four Criteria for Using Deadly Force

Most states follow guidelines that require the suspect to meet four criteria before you can use deadly force against him. They are:

1. Intent.
2. Apparent Ability.
3. Opportunity.
4. Jeopardy.

Intent

The suspect must display **Intent** to cause or attempt to cause serious physical harm against you or someone you intend to defend. That ***intent*** is demonstrated by the ***actions*** of the suspect.

For instance:

Bruce is walking through the park. Bruce sees a person, Jim. He has had many heated arguments with Jim in the past over a love triangle. The last time they argued, Jim threatened to kill Bruce.

When Jim is about 30 feet away, Bruce sees Jim pull out a long, military-style knife. Jim has a look of extreme anger on his face. Jim raises the knife high above his head and screams, "I'm going to kill you, Bruce!" and starts running full speed toward Bruce.

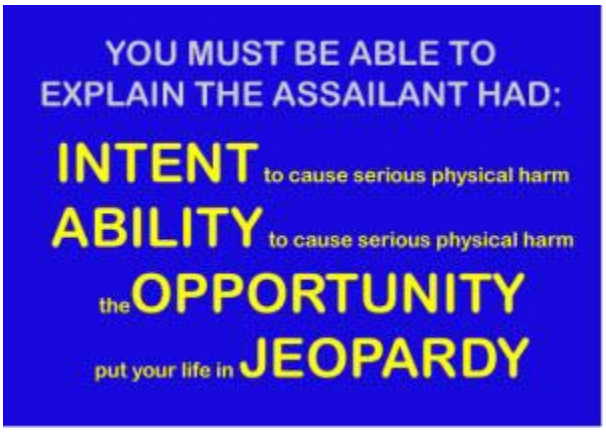
Bruce is a legally armed citizen with a concealed carry permit. Because he is in an open park with no cover or area to retreat to, Bruce draws his handgun. Jim is quickly closing the gap between them. Bruce begins to step laterally to avoid the wild attack and fires in self-defense.

In this situation, Bruce can articulate Jim's intentions by stating that Jim:

1. Pulled out the long, military-style knife.
2. Had a look of extreme anger on his face.
3. Raised the knife above his head in a manner used to attack.
4. Screamed threats to kill Bruce.
5. Ran full speed toward Bruce.
6. Closed the gap to get within striking distance with the knife.

Bruce can articulate that Jim had the intent to cause serious physical harm or death.

In most states, any force used must be in balance to the force used against you. For instance, if someone came up to you during an argument and punched you in the face, most states do not permit you to pull a gun and shoot him in the face. You probably could not articulate that the action of being punched in the face warranted shooting the person unless there were additional extreme circumstances.


YOU MUST BE ABLE TO
EXPLAIN THE ASSAILANT HAD:
INTENT to cause serious physical harm
ABILITY to cause serious physical harm
the OPPORTUNITY
put your life in JEOPARDY

Apparent Ability

In the scenario above, Bruce sees what appears to be a deadly military-style knife.

The suspect must display **Apparent Ability** to cause or attempt to cause serious physical harm against you or someone you intend to defend. That ***apparent ability*** is usually demonstrated by the ***weapons*** available to the suspect.

In our scenario, Jim has a deadly weapon, the knife. He is rapidly approaching striking distance. The totality of circumstances demonstrates that Jim intends to use the knife as a deadly weapon to cause or attempt to cause serious physical harm.

Opportunity

The suspect must have the **Opportunity** to cause or attempt to cause serious physical harm against you or someone you intend to defend. That ***opportunity*** is usually demonstrated by the ***surroundings*** between you and the suspect.

Take our scenario with Bruce and Jim and change one thing: Bruce is inside his home and hears Jim screaming outside. Bruce is still armed. The doors are locked.

Bruce looks out the window and sees Jim running around, flashing the knife and screaming that he is going to kill Bruce. This time Jim cannot get to Bruce because of the house with the locked doors. Jim does not have the *opportunity* to cause serious physical harm at this point. As a result, Bruce cannot fire through the door or an open window. Bruce should call the police and stay inside.

If Bruce steps outside, he may be considered the aggressor. Bruce was safe inside. The reasonable and prudent person might believe Bruce was looking for a reason to shoot Jim by stepping outside with the gun.

Jeopardy

The totality of circumstances must put you or the person you are defending in **Jeopardy of Serious Physical Harm**. This just wraps up the whole situation. The first responding police officers, the prosecutors, judge, and jurors will look at the whole situation to decide whether you acted in a reasonable and prudent manner.

Your Guidelines

There are three last pieces to the puzzle. The court will look at three guidelines you must meet to use deadly force. Your use of force must be:

1. Logical.
2. Reasonable.
3. Necessary.

The court will examine whether your actions were logical, reasonable and necessary. Logical and reasonable are very similar in meaning. The meaning of words is very important. While you may fight your first battle on the street with firearms and ammunition, your next battle for survival will be in the courtroom. In the courtroom, we fight with words.

The definitions I found in *Webster's New World College Dictionary* make sense:

1. Logical : Sound Judgment.
2. Reasonable : Correct Reasoning.
3. Necessary : Unavoidable.

Years ago, I called this part of my training block "From the trigger to the typewriter." As a police officer, I went straight from pulling the trigger to sitting down and typing the report that articulated why I did what I did.

Legally armed citizens need to think in the same manner. If you are involved in an armed encounter, you will go from pulling the trigger to almost immediately being asked to articulate what happened. That will probably include a written statement that may well decide your fate for years to come. You must be able to clearly explain that your actions were logical. You may decline to make a statement at the scene until you get an attorney, but eventually you will have to answer questions.

Let's take another look at our scenario. In the park, Bruce was faced with serious physical harm when Jim charged at him with the knife. Most people would likely consider it logical that Bruce used deadly force in the park.

But how about the alternative scenario, where Bruce is in the house? Bruce has three choices. He can do nothing with the gun and call the police. He can shoot through the window or door. He can step outside and confront Jim.

Most people would likely think it logical for Bruce to stay inside and call the police. Shooting through the door does not make sense because Bruce is not in danger. Some people probably think Bruce should go outside and confront Jim. After all, Jim has brought a knife to a gunfight!

Jim could break in or ambush Bruce later. Maybe Bruce needs to take care of this here and now. How about the old tried and true, "Shoot him outside and drag him in!" That way maybe Bruce commits two felonies, murder and tampering with evidence. The police never figure that stuff out these days, right?

The Deciding Factor

The last part that settles it all is the big word: **Necessary**.

“It was completely unavoidable, Your Honor. I had no choice. It really was him or me.”

This is why we don’t normally shoot someone for stealing property. Even though we may want to bust a cap in his behind, we know that human life is more important than possessions. That is why we hold our children so dear. That is why you and I would throw ourselves in front of an army of criminals to save our families. That is what separates us from the criminals.

Back in our scenario, Bruce used deadly force in the park because it was unavoidable. It really was him or the other guy. Bruce did not have another choice.

When Bruce is in the house, he has many choices. The best choice is to stay inside behind safe walls. He does not shoot from inside the house because the confrontation is avoidable. Bruce does not go outside because he wants to avoid the confrontation.

If Bruce does go outside, he violates that premise and becomes the aggressor. Bruce may end up in jail, or maybe Jim is just good or crazy enough to get him with the knife, and Bruce winds up dead.

Sometimes discretion is the better part of valor.

The Bottom Line

The bottom line is, if you can avoid a fight, avoid a fight. If you have a gun, every confrontation you get in becomes an armed confrontation by the presence of your gun. And if you do carry a gun, be mentally prepared by knowing when you can legally use deadly force. Be physically prepared with proper equipment and good training. If you are forced into a fight, be sure that you go home to the ones you love.

The Reasonable Man Doctrine

By Marty Hayes, J.D.
Posted: March 23, 2010

At first I intended to write about one of the sexier aspects of self-defense as it pertains to the legal arena, perhaps something about the "21-foot" rule (and why it is not a rule at all), or maybe why shooting someone in the back isn't necessarily murder (even though the pinheaded DA thinks it is). But, since the logical structure of teaching anything (and I feel that is what I am doing with this series of articles, teaching) is to lay the proper foundation for learning, my responsible side won out over my creative side. So let's do it right and examine some basic concepts in armed self-defense, starting with the "Reasonable Man Doctrine."

The cornerstone of American Jurisprudence is the Reasonable Man Doctrine. Unless your case centers on some obscure legal technicality, the Reasonable Man Doctrine will be used extensively throughout your self-defense trial. What would a reasonable person have done under the same circumstances, knowing what you knew at the time? That phrase, my friends, will be your lifeblood during the episode of your life that will likely define you as a man or woman.

> "The cornerstone of American Jurisprudence is the Reasonable Man Doctrine."

Did you act reasonably when you drew your pistol? Was it reasonable for you to have thought the person was armed? Would it have been reasonable for you to have taken some action other than shooting? Was it reasonable to fire six shots? Was it reasonable to use hollowpoint ammunition? Or even (brought up at the last trial I testified at) was it reasonable for you to use a gun that doesn't have a safety? Seriously, the DA made an issue of the defendant's Glock, trying to paint it as somewhat unreasonable to have used a fully loaded Glock 19 because it didn't have an external safety! Sheesh.

In a self-defense trial, the jury will be tasked with the chore of deciding if the amount of force used was reasonable. In order to have a chance of success, you will need to take them on a slow trip down

the road to what it means to be a responsible armed citizen, and why, given your background, experience and training, the choices you made when you were forced to use deadly force in self-defense were reasonable.

But before you get a chance to utter a word in court in your defense (other than the words "Not guilty, your honor" that you said at the preliminary hearing), the prosecution will have had their way with the witnesses they decided to call, the police officers whom they play golf with on Saturday afternoons, and all under the watchful eye of the judge, whom they financially supported in the last election.

So, when it becomes your turn to show your side of the case, you had better have it planned out well in advance and in as much detail as time and money will allow. First, your attorney will have cross-examined the prosecution's witnesses, and perhaps gotten some of the prosecution's evidence disallowed through legal objections. That helps, but blowing a hole in the prosecution's case isn't likely going to be enough, because you probably have already met the elements of the crime you are being charged with. You did purposely shoot the other guy, right? If so, then that one simple fact likely proves you guilty, absent the circumstances of self-defense. It is those circumstances that a reasonable person (a juror) must know, feel and fully understand in order to vote for your acquittal.

> "Remember that the eyes the jury should be viewing the evidence through should be your eyes."

Remember that the eyes the jury should be viewing the evidence through should be your eyes. That is why your testimony is critical. How will the jury know what you saw, felt, heard, smelled, etc. unless you tell them? How will they know what you were thinking unless you tell them about your past experiences, education and training?

If your defense strategy is to discredit each and every witness the prosecution brings forth, resulting in the prosecution's case being like a smelly fart in the deliberation room, you will still lose. The jury will hold their collective noses and vote to convict, because you didn't give them a reason to let you go, and you met the elements of the crime.

Instead, open that door and let the fresh air in! You need to explain to the jury that you have received training in self-defense law, and it was that training that led you to believe your life was in danger. You need to articulate to the jury that you reasonably believed the person or persons you shot possessed the physical ability to cause your death or inflict serious physical injury upon you. Then make them understand that the attackers were in a close enough proximity to use that ability against you, that they indeed had the opportunity to kill you.

After this, you must also show (and this is likely the most critical part of your testimony) that you reasonably believed that the attacker or attackers were intending to, or were actually in the act of, using that ability and opportunity to place your life in jeopardy, and that you did what any reasonable person would have done under the same circumstances, that being shoot to save your life.

And the icing on the cake will be, even if you live in a state where you have the right to stand your ground and defend yourself, that you had no choice. There was no out, no better option. After all, if there had been a better option, wouldn't you have taken it? I certainly would.

> Show the jury that your action was justified because it was the reasonable thing to do.

Each self-defense case is unique, but they all have one common theme: to show to the jury that your action, i.e., the horrible act of shooting and killing or shooting and maiming another, was actually justified because it was the reasonable thing to do. And most importantly, to show that they (the jury) would have done the same thing if they had been in your shoes. Keep that foremost in your mind when deciding if you need to pull the trigger in self-defense.